

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 42989
Docket No. MW-42844
18-3-NRAB-00003-150065**

The Third Division consisted of the regular members and in addition Referee Patricia Bittel when award was rendered.

**(Brotherhood of Maintenance of Way Employees Division -
PARTIES TO DISPUTE: (IBT Rail Conference
(
(Delaware Hudson Railway Company**

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier assigned outside forces (ING/Civil Construction Contracting) to perform Maintenance of Way work (concrete patch and repair work) on the Martin’s Creek Viaduct at approximately Mile Post 644 on the Sunbury Subdivision beginning on December 10, 2012 and continuing (Carrier’s File 8-00947 DHR).**
- (2) The Agreement was further violated when the Carrier failed to provide a proper advance notice of its intent to contract out the aforesaid work or make a good-faith effort to reduce the incidence of subcontracting and increase the use of Maintenance of Way forces as required by Rule 1 and ‘Appendix H’.**
- (3) As a consequence of the violations referred to in Parts (1) and/or (2) above, Claimants D. Kovalski, R. Nichols. A. Gasper, G. Hamilton, M. Lawrence and J. Johnson shall now each be compensated at their respective and applicable rates of pay for an equal and proportionate share of the total man-hours expended by the outside forces in the performance of the aforesaid work beginning on December 10, 2012 and continuing.”**

FINDINGS:

The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act, as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

The Carrier asserts this was not scope covered work in that it was not a normal scaling and concrete patching job. It maintains the equipment is specialized and not owned by the Carrier. The project required testing of concrete deterioration in, around and under the arches areas, as well as removal of the outer edges of the arch rings, it contends. Further, the Carrier explained that the concrete had to meet AREMA specifications along with surface preparations for an epoxy resin bonding system. It emphasizes that the contractor was knowledgeable and trained in this, noting that though bargaining unit employees had worked on the Nicholson viaduct, they only did temporary repairs.

The Carrier notes that the scaffolding system was critical to the attachment of brackets and securement, and was designed by the contractor; it is not owned by the Carrier. It points out that there are only two concrete viaducts in the entire system.

The Carrier explained that the contractor was up to date on technology, construction and repair methods and had the new materials introduced into the market to increase efficiency. The contractor retained responsibility for environmental concerns and the work was warrantied; the Carrier notes that neither of these advantages would have existed with bargaining unit employees.

The Organization asserts that the Carrier did not identify any specific aspect of the work that was specialized. The Organization also requested specific information be made available for the requested conference, including dates, details about the specialized nature of the work and the Carrier's attempts to procure rental equipment. It asserts the Carrier failed to identify what specialized construction methods were involved with this project that the Carrier's forces could not perform. The Organization sees the contracting out without specialized need or the withholding of information about such specialized need as acting in bad faith.

The Board finds that the Carrier did provide information to the Organization about materials and execution in its submission. The Board is persuaded that testing concrete deterioration, removing portions of supporting arches and working with an epoxy resin bonding system are all distinguishable from fundamental concrete repair work done by the unit, and far more delicate. For example, when a substance requires expertise to properly mix and apply, and when that substance is responsible for the integrity of an entire structure, it must be acknowledged that the expertise involved is indeed important.

Though the Board is well aware that unit employees have historically performed general repairs to concrete structures, the record does not establish that they have historically performed the type of duties contracted out in this case. In the opinion of the Board, the work involved a skill set which does not currently exist within the bargaining unit. This decision is reached in the factual context of a unique and specialized project, and is not intended as precedent in distinguishable circumstances.

AWARD

Claim denied.

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ORDER

This Board, after consideration of the dispute identified above, hereby orders that an Award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 29th day of March 2018.